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Attorneys for Defendant to  
Complaint in Intervention, Navigators Insurance Co.,  
dba Navigators Protection & Indemnity

**FILED**  
**DISTRICT COURT OF GUAM**

AUG 31 2007

**JEANNE G. QUINATA**  
**Clerk of Court**

IN THE DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
MARWAN SHIPPING & TRADING CO.,  
FIVE SEAS SHIPPING CO., LLC, and S.J.)  
GARGRAVE SYNDICATE 2724, *in*  
*personam*,  
  
Defendants.  
  
AND CROSS-CLAIMS,  
COUNTERCLAIMS, AND CLAIM IN  
INTERVENTION

Civil Case No.: 06-00011

**DEFENDANT NAVIGATORS  
INSURANCE COMPANY'S MOTION TO  
DISMISS AMENDED COMPLAINT IN  
INTERVENTION OF INCHCAPE  
SHIPPING SERVICES AND  
SUPPORTING MEMORANDUM OF  
POINTS AND AUTHORITIES**

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**NO HEARING REQUESTED**

Judge: Honorable Frances Tydingco-Gatewood

**I. INTRODUCTION**

NAVIGATORS INSURANCE COMPANY ("NAVIGATORS") hereby moves the  
Court to dismiss the Amended Complaint In Intervention of INCHCAPE SHIPPING  
SERVICES GUAM LLC ("ISS") pursuant to FRCP 12(b)(6) on the grounds that the complaint

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Civ. Case No. 06-00011; Our File No. 2900.81

1 fails to state a claim against NAVIGATORS upon which relief can be granted. All of ISS'  
2 claims against NAVIGATORS seek indemnity for the Jose D. Leon Guerrero Commercial  
3 Port's ("PORT") alleged claim(s) against ISS for damage to its pier. The problem is that the  
4 PORT is not even a party to this action and has made no claims against anyone in this action.  
5 Thus, there are no claims against ISS in this action for which is can seek indemnity. Therefore,  
6 ISS' Amended Complaint in Intervention against Navigators should be dismissed.  
7

## 8 **II. ISS' ALLEGATIONS AGAINST NAVIGATORS**

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10 On April 19, 2006, the United States of America (USA) filed this action against  
11 defendants Marwan Shipping & Trading ("Marwan"), Five Seas Shipping & Trading LLC  
12 ("Five Seas") and S.J. Gargrave Syndicate 2724 ("Gargrave") seeking recovery of costs  
13 allegedly incurred in August and September 2004 for preventing a pollution incident in Guam  
14 waters involving a vessel, the AJMAN 2 (ISS Amended Complaint In Intervention, p. 3, ¶ 15 ;  
15 p.4, ¶17 and 18). ISS was NOT named as a defendant by the USA. Nonetheless, ISS  
16 intervened in the USA's action alleging that it was the *shipping agent* for the AJMAN 2 (ISS  
17 Amended Complaint In Intervention, p. 4, ¶21) and that ISS was being blamed for damage to  
18 PORT property caused by the AJMAN 2. (ISS Amended Complaint In Intervention, p. 4, ¶17).  
19 ISS alleged that the PORT made a written demand against ISS, and *threatened to sue* ISS to  
20 recover for damage to the PORT's wharf . (ISS Amended Complaint In Intervention, p. 6, ¶¶  
21 29 & 32). ISS then alleged that NAVIGATORS was responsible to pay for the wharf damage  
22 caused by the AJMAN 2 and that ISS was entitled to indemnity from NAVIGATORS for any  
23 liability it had to the PORT, including for responding to the PORT's non-existent suit. (ISS  
24 Amended Complaint In Intervention, p. 10-11, ¶¶59, 63, 65-66).  
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1 **III. LAW AND ARGUMENT**

2 **A. ISS Is Required to Allege Sufficient Facts Entitling it To Relief as a Matter**  
3 **of Law**

4 The purpose of the motion to dismiss is to test the legal sufficiency of the  
5 complaint. See, e.g. Niece v. Sears, Roebuck & Co., 293 F.Supp. 792 (N.D.Okla. 1968)  
6 (“function of a motion to dismiss is to test the law of a claim, not the facts which support it”).  
7 The Court’s inquiry is limited to whether the allegations in the complaint comprise a legally  
8 cognizable claim for relief. See Yuba Consol. Gold Fields v. Kilkeary, 206 F.2d 884, 889 (9th  
9 Cir. 1953) (“ruling on a motion to dismiss for failure to state a claim upon which relief can be  
10 granted is a ruling on a question of law”); Alonzo v. ACF Property Management, Inc., 643 F.2d  
11 578, 579 (9th Cir. 1981) (same). Therefore, if ISS’ claims against NAVIGATORS fail as a  
12 matter of law, the motion to dismiss should be granted.  
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15 In deciding a 12(b)(6) motion, the Court construes the complaint in the light most  
16 favorable to the complainant, Parks Sch. of Bus. v. Symington, 51 F.3d 1480, 1484 (9th Cir.  
17 1995), and accepts all allegations of fact as true. Pareto v. F.D.I.C., 139 F.3d 696, 699 (9th Cir.  
18 1998). “Nonetheless, conclusory allegations without more are insufficient to defeat a motion to  
19 dismiss for failure to state a claim.” McGlinchy v. Shell Chem. Co., 845 F.2d 802, 810 (9th  
20 Cir. 1988); see also Pareto v. F.D.I.C., 139 F.3d at 699 (“conclusory allegations of law and  
21 unwarranted inferences are not sufficient to defeat a motion to dismiss”); Anderson v. Clow (In  
22 re Stac Elecs. Sec. Litig.), 89 F.3d 1399, 1403 (9th Cir. 1996) (citation omitted) (same). “A  
23 court's duty to liberally construe a plaintiff's complaint in the face of a motion to dismiss is not  
24 the equivalent of a duty to re-write it for her... we do not think it over burdensome for her to be  
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1 required to allege the factual basis for her claim.” Peterson v. Atlanta Hous. Auth., 998 F.2d  
2 904, 912 (11th Cir. 1993).

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4 **B. ISS Has Failed to Allege Any Facts Which Would Require NAVIGATORS  
to Indemnify ISS in This Action**

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6 The USA did not sue ISS. ISS intervened and made claims against NAVIGATORS that  
7 relate to non-existent claims against ISS by the PORT in this action. The PORT is not even a  
8 party to this action and has made no claims against ISS in this action. Thus, ISS’ alleged  
9 claims against NAVIGATORS seek indemnity for non-existent claims and should be  
10 dismissed.  
11

12 In a separate action, the PORT has made claims for damage to its wharf, but not against  
13 ISS. NAVIGATORS requests the Court take Judicial Notice of the case entitled “JOSE D.  
14 LEON GUERRERO COMMERCIAL PORT, et al., v. MARWAN SHIPPING & TRADING  
15 COMPANY LLC, SHARJAH, et al.,” including the related third party claims, Case no. 07-  
16 00010 in the District Court of Guam (hereinafter “PORT Action”). In the PORT Action, the  
17 PORT did NOT name ISS as a defendant. ISS injected itself into this case by filing a motion  
18 to intervene. As ISS is only seeking indemnification from NAVIGATORS for damages  
19 stemming from the PORT’s non-existent cause of action against ISS in this action, and there  
20 are no facts which would require NAVIGATORS to indemnify ISS against the PORT’s  
21 hypothetical claim, NAVIGATORS requests that the Court dismiss ISS’ complaint against  
22 NAVIGATORS.  
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1 **IV. CONCLUSION**

2 ISS' Amended Complaint In Intervention fails to state a legally cognizable cause of  
3 action against NAVIGATORS and NAVIGATORS respectfully requests that it be dismissed.  
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5  
6 DATED: August 31, 2007

Respectfully submitted,

7 Stanley L. Gibson  
8 GIBSON ROBB & LINDH LLP

9 BLAIR STERLING JOHNSON  
10 MARTINEZ & LEON GUERRERO

11 By   
12

13 Thomas C. Sterling  
14 Attorneys for Defendant  
NAVIGATORS INSURANCE CO., d.b.a.  
Navigators Protection & Indemnity

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COMPLAINT RE USA V MARWAN ET AL.DOC  
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